

REMARKS/ARGUMENTS

Claims 1-10 are pending in the instant application. Claims 1-10 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,223,918. Claims 1-10 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,659,296. Claims 1-2 and 7-10 are rejected under 35 U.S.C. 102 (b) as being anticipated by US Patent No. 5,316,163. Claim 1 has been amended to more particularly claim the instant invention. Claim 2 has been deleted. Two new claims, claims 11-12, have been added. Basis for new claim 11 is found on page 7, lines 14-15. Basis for new claim 12 is found on page 8, lines 1-8. None of the amendments constitute new matter in contravention of 35 U.S.C. §132. Reconsideration is respectfully requested.

Claims 1-10 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,223,918. This rejection is respectfully traversed.

The present invention claims a cap for a container which includes a cover member that provides a removable portion to allow access to a surface of a stopper. The removable portion is surrounded by a protective portion extending about a user-engageable member which allows for the removable portion to be removed. Claim 1 now specifies that the protective portion comprises a wall which extends generally about the periphery of the engageable member, extending to a height in line with, or above, the upper surface of the engageable member.

The '918 patent claims a package comprising a container with a mouth, a stopper removably inserted into the mouth, and a cap overlying the stopper. The cap includes a removable portion which can be removed to gain access to the stopper, and an engageable member for operation by a user to remove the removable portion. The cap includes a wall

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extending generally about the periphery of the engageable member to protect it from accidental operation of entanglement. The wall has at least one opening therethrough.

It is well settled that '[t]he proper inquiry for obviousness-type double patenting is to compare the claims of the two patents to see whether they are patentably distinct. Panduit Corp. v. Dennison Mfg. Co., 227 USPQ 337. The package claimed by the '918 patent fails to recite, as does the present invention, a wall which extends to a height in line with, or above, the upper surface of the engageable member. Furthermore, Applicant respectfully submits that the claims of the '918 patent provide no motivation to one of ordinary skill in the art to so limit the wall feature of the cap. To illustrate: as noted for the Von Schuckmann reference, hereinbelow, it was known in the art that the protective wall could extend to a height below the upper surface of the engageable member. Therefore, Applicant respectfully submits that one of ordinary skill in the art would not have been motivated to limit the wall height in accordance with the teachings of the present invention. As the claims of the '918 patent fail to disclose, teach, or suggest the protective wall being at least as high, or higher, than the upper surface of the engageable member, the present invention is patentably distinct thereover. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1-10 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,659,296. This rejection is respectfully traversed.

The '296 patent is the parent of the present application and claims a cap for a container, comprising a moulding. The moulding comprises a retaining portion for engaging the container and retaining the cap thereon, a frangibly removable portion which is removable to expose at least partly a closure member for the container, and a user engageable member operable by a user to remove the removable portion. The cap further includes a protective portion for the engageable member provided radially outwardly thereof. The protective portion is formed separately of the moulding and is attached thereto, such that the

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practice portion comprises a wall which extends generally about the periphery of the engageable member. The wall includes at least one opening therethrough.

Similar to the '918 patent, the '296 patent does not include the limitation that the protective portion extends to a height in line with, or above, the upper surface of the engageable member. Applicant respectfully submits that the claims of the '296 patent provide no motivation for so limiting the height of the protective portion, and that only an impermissible reading of the specification of the '296 patent would provide such a motivation. As the claims of the '296 patent do not disclose, teach, or suggest the present invention, the present invention is therefore patentably distinct thereover. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1-2 and 7-10 stand rejected under 35 U.S.C. §102(b) as being anticipated by US Patent No. 5,316,163 to von Schuckmann. This rejection is respectfully traversed.

Von Schuckmann discloses a cap for a bottle. The cap consists of a two-piece member consisting of an inner cap member (6) comprising a removable portion (8) and an engageable member, and an outer cap member (11) which threadably engages the inner cap which includes several vertically depending and spaced strips. The outer cap member is positioned over the inner member so as to retain it to the bottle. The outer cap may further include, as only indicated by figure 1, a solid wall extending about the engageable member, albeit clearly below the upper surface of the engageable member.

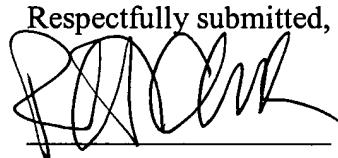
In response to the rejection, Applicant have amended claim 1 to incorporate the limitation from unrejected claim 3 that the protective wall extends to a height in line with, or above, the upper surface of the engageable member. While all of the limitations of pending claim 3 have been added to pending claim 1, Applicant respectfully submits that von Schuckmann fails to disclose, teach, or suggest this limitation. In fact, von Schuckmann provides no details on its protective wall within its written specification, all description of it is entirely omitted. Accordingly, Applicant respectfully submits that von Schuckmann

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provides no motivation to set the wall height as taught by the present invention. In view of this deficiency, Applicant respectfully submits that the present invention is patentably distinct over von Schuckmann. Reconsideration and withdrawal of the rejection are respectfully requested.

In view of the amendments and remarks hereinabove, Applicant respectfully submits that the instant application, including claims 1 and 3-12, is patentably distinct over the prior art. Favorable action thereon is respectfully requested.

Any questions with respect to the foregoing may be directed to Applicant's undersigned counsel at the telephone number below.

Respectfully submitted,


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